

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF2298
)	EEOC NO.: 21BA81249
ELENA PATLAN)	ALS NO.: 09-0599
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen, presiding, upon Elena Patlan's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CF2298; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On February 29, 2008, the Petitioner filed a discrimination charge with the Respondent, alleging that Cardinal Health ("Employer") failed to accommodate her physical disability, (lumbar radiculopathy, i.e., lower back pain) (Count A) and discharged her because of her physical disability (Count B) in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On September 23, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On October, 26, 2009, the Petitioner filed a timely Request.
2. In November 1997, the Employer hired the Petitioner as an Assembler. On August 16, 2006, the Petitioner was injured at work. Her physician thereafter placed various restrictions on the Petitioner's physical movement, including no bending, pulling, or heavy lifting. The Employer accommodated the Petitioner by allowing her to work as a Pre-Assembler.
3. On June, 7, 2007, the Petitioner received a note from her physician which stated the Petitioner could work only four (4) hours per day, that she had to change positions every 15 minutes, and she could not lift anything over 10 pounds. The Petitioner delivered this note to her Employer.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

At that time, the Employer had no positions available to accommodate these new medical restrictions, so the Employer sent the Petitioner home.

4. On June 14, 2007, the Employer instructed the Petitioner to return to work because it had work available that would accommodate the Petitioner's new medical restrictions. However, when the Petitioner returned to work on June 14th, she did so with a new note from her physician, which stated the Petitioner would be completely unable to work for approximately three (3) months.
5. At this time, the Employer had in place a Family and Medical Leave of Absence Policy ("Policy") which permitted qualified employees, such as the Petitioner, to take up to 26 consecutive weeks of medical leave. Under the Policy, if the employee did not return to work upon expiration of this leave, or did not receive an extension of her leave, the employee could be immediately terminated. The Petitioner signed an acknowledgment of receipt and disclaimer on July 31, 2001, which indicated the Petitioner was aware of the terms and conditions of the Policy.
6. While it does not appear the Petitioner formerly applied for medical leave pursuant to the Policy, it appears the Employer considered the Petitioner to have commenced medical leave as of June 14, 2007. Under the Policy her 26 weeks of leave expired on December 9, 2007.
7. The Petitioner did not return to work between June 14 and December 9, 2007. At no time between June 14th and December 9th did the Petitioner request an extension of her medical leave.
8. On December 9, 2007, the Employer administratively discharged the Petitioner in accordance with the Policy.
9. On February 21, 2008, the Petitioner's physician released the Petitioner to return to work with restrictions.
10. When the Petitioner went to the Employer on February 22, 2008, however, she was informed by the Employer that it had no positions available to accommodate all of her medical restrictions. Further, the Employer told the Petitioner that she had been terminated on December 9, 2007.
11. The Petitioner now alleges in her charge and argues in her Request that on February 22, 2008, the Employer failed to accommodate her disability, and that the Employer discharged the Petitioner on February 22, 2008, because of her disability. Further, the Petitioner states the Employer never notified her of her termination either verbally or in writing.
12. In its Response, the Respondent argues there is no substantial evidence to substantiate either the Petitioner's failure to accommodate claim or the discriminatory discharge claim, and therefore asks the Commission to sustain its dismissal of the charge.

Conclusion

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, * 2 (March 7, 1995)(1995 WL 793258).

In this case, the evidence shows that as of December 9, 2007, the Petitioner was no longer employed by the Employer. Therefore, the Petitioner's failure to accommodate and unlawful discharge claims against the Employer fail because no employer-employee relationship existed between the Petitioner and the Employer on the date of the alleged adverse action, which was alleged by the Petitioner to be February 22, 2008.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Cardinal Health, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 28th day of April 2010.

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen